IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.150 OF 2006

Jasmin Bhogilal Shah Petitioner
versus
The State of Maharashtra & anr. Respondents

ALONG WITH
fcCRIMINALL WRIT PETITION NO.1732 OF 2006

Jasmin B. Shah Petitioner
versus
Sr.Inspector of Police & anr. Respondents

ALONG WITH
CRIMINAL WRIT PETITION NO.1733 OF 2006

Jasmin B. Shah Petitioner
versus
Sr.Inspector of Police & anr. Respondents

Shri M.M.Vashi with Mr.Rishi Bhuta for petitioners.

Shri P.S.Hingorani, APP for Respondent State.
Shri H.H.Ponda for respondent no.2.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE ORDER : 21.09.2006

DATE OF PRONOUNCING THE ORDER : 20.10.2006

PC :

1. Criminal Writ Petition No.150 of 2006 invokes this Court’s jurisdiction under Article 227 of

the Constitution of India r/w Section 482 of Code of Criminal Procedure to challenge an order passed by the learned Metropolitan Magistrate issuing the process against the petitioner before me.

2. Criminal Writ Petition No.1732 of 2006 is to quash Criminal Complaint bearing No.303/N/ 2003 pending before the Metropolitan Magistrate's Court at Andheri.

3. Criminal Writ Petition No.1733 of 2006 is for quashing CR No.434 which is pending before the Metropolitan Magistrate's Court at Andheri.

4. The petitioner in Writ Petition No.150 of 2006 is arraigned as an accused in C.C. numbers 337/SS/2004, 691/SS/2004, 698/SS/2004, 697/SS/2004, 696/SS/2004, 695/SS/204, 694/SS/204 pending on the file of 44th Court of Metropolitan Magistrate's Court at Andheri for an offence punishable under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I.Act" for short) and respondent no.2 is the original complainant in the complaint filed before the Hon'ble Court.

5. It is the case of the petitioner that after recording verification of the complaint (respondent no.2) process came to be issued against petitioner. The process was issued on the basis that the complaint, prima facie, discloses commission of offence u/s 138 of N.I. Act.

6. Shri Vashi - learned counsel appearing for the petitioner contends that second respondent entered into a Memorandum of Understanding with regard to a property belonging to the petitioner. The total consideration agreed was Rs.4.50 crores. It is alleged that respondent no.2 paid Rs.1.50 crores. It is alleged that petitioner was unable to honour the transaction and, therefore, he agreed to return the amount of Rs.1.50 crores which was paid to the petitioner by respondent no.2 in cash.

7. For the same offence respondent no.2 lodged an FIR being CR No.434 of 2003 u/s 506 (Part-II). The CR was registered with Juhu Police Station. Another CR was lodged by respondent no.2 pertaining to the same transaction with D.N.Nagar Police Station. The CR was numbered as 322 of 2003. It alleged commission of offences by the

petitioner punishable under sections 420, 406 506 (Part-II) of IPC.. The petitioner was arrested on 23rd October 2003 and enlarged on bail by the Magistrate on 30th October 2003.

8. The submission of the petitioner is that after he is released on bail he sent a letter to the Commissioner of Police as well as Director General of Police and other authorities pointing out therein that while in police custody, the petitioner's brother was threatened by one Shri Shaikh, Officer of D.N.Nagar Police Station. He threatened petitioner's brother and said that if the dispute with respondent no.2 is not settled, the petitioner will have to undergo police torture. It is under this threat that on 28th October 2003, nine cheques were forcibly taken from the petitioner in police custody. The petitioner was made to forcibly sign the same. Petitioner's brother was asked to prepare a letter drafted by respondent no.2 on the letter head of the petitioner confirming the transaction. Even this letter was forcibly signed by the petitioner. The petitioner stopped payment of the cheques which are subject matter of the complaint.

9. The petitioner has referred to certain proceedings taken for return of the property. But it is not necessary to refer to them. The petitioner's case is that thereafter a notice was issued calling upon the petitioner to make payment of the amount under the cheques as the same were dishonoured upon presentation. The notice was replied by the petitioner and he pointed out that there is no question of discharging any liability as the cheques were taken in police lock-up and under pressure.

10. Yet, the learned Magistrate proceeded to issue process and summoned the petitioner. The petitioner applied to this Court for quashing the said order but he was directed to approach the Sessions Court. The trial was stayed in the mean while.

11. The petitioner approached the learned Sessions Judge and on 17th January 2006 the revision application has been dismissed. The order issuing process is confirmed.

12. Shri Vashi submits that from the aforesaid facts and circumstances it is clear that the cheques have been taken forcibly by issuing

threats and applying pressure. There is no question of the cheques being honoured or the liabilities being discharged thereunder. He, therefore, submits that the complaint does not disclose any offence. The learned Judge has failed to apply settled principles and in such circumstances this Court should intervene and exercise its inherent powers. Shri Vashi sought to rely upon certain correspondence and contends that this is a case where the applicant had every intention to honour the transaction but the premises could not be given to the complainant on account of the fact that M/s.Sangli Bank did not vacate the same as agreed. It is in such circumstances and because the petitioner was prevented from honouring the same, that the entire matter has arisen and this Court should interfere and quash the proceedings.

13. He submits that the complainant is Managing Director of M/s.Sony Mony Electronics Limited. He submits that the transaction in question cannot be said to be with complainant. My attention is invited by Shri Vashi to the reply to the notice as also other correspondence. Shri Vashi has pointed out that the cheques have been seized. He submits that the Trial Judge as also

the learned Revisional Court has failed to apply their mind and take note of the orders passed on the application preferred by the petitioner for return of the property. It is in such circumstances that the petitioner applies under Article 227 of Constitution of India r/w Section 482 of Cr.P.C.. Shri Vashi has relied upon the following decisions :-

1) 2003-Cri.L.J.-929 (V.A.Sivaraman Vs. Vasu and another);

2) 2005-Cri.L.J.-1982 (M/s.L & T Ltd. and others Vs. State of U.P. and others);

3) 2003-All MR (Cri) Journal-105 (Avon Organics, Hyd,. Ltd. Vs. Pioneer Products Ltd. and others);

4) CDJ-2005-BHC-596 (Ramdas Anant Nail Vs. Jacob Fernandes & anr.);

5) JDC-1426 (Smt.Ashwini Satish Bhat Vs. Jeevan Divakar);

6) III (1997)-CCR-117 (M/s.Swastik Coaters Pvt.Ltd. Vs. M/s.Deepak Brothers & anr.);

7) 2000-Cri.L.J.-1988 (Shanku Concretes Pvt.Ltd. and others Vs. State of Gujarat and another).

14. On the other hand, Shri Ponda, learned counsel appearing for original complainant has invited my attention to the complaint and has submitted that the complaint prima facie discloses commission of offence u/s 138 of N.I.

Act. This is not the stage where the Court below can take cognizance of the defence of the accused. All submissions advanced before me are in the nature of defence and in answer to the charge under aforementioned penal provisions. This by itself does not mean that the proceedings are not maintainable. Shri Ponda has invited my attention to the fact that there is a serious dispute with regard to the version set out in the petition. He submits that the petition is not at all bona fide and deserves to be dismissed with costs.

15. With the assistance of Shri Vashi and Shri Ponda I have perused the order passed by the Courts below. I have also perused the complaint. The complaint is clearly setting out the fact that the transaction was entered into, that earlier allegations were made and FIRs lodged and cheques were drawn in favour of the complainant. It is in these circumstances that the complainant alleges commission of offence. The Revisional Court has taken note of contentions of both sides. Apart from the fact that there are no proper grounds to challenge the order passed by the Revisional Court, additionally, I am of the view that the submissions of Shri Vashi cannot be

accepted at this stage. The Revisional Court has observed that firstly on account of the ingredients of Section 138 of N.I. Act being made out by the complainant and the complaint read as a whole indicating commission of offence and secondly because the submissions raised are in the nature of defence, that the order issuing process cannot be interfered. The learned Sessions Judge has also observed that prior history so also the fact that cheques were allegedly issued under coercion or pressure, is something which the petitioner will have to establish at the trial. Once the ingredients of Section 138 of N.I. Act being made out, it is not for the Trial Court or for the Revisional Court to take note of the arguments on merits.

16. After perusing the said Judgement and the complaint I am of the view that the concurrent prima facie conclusion of the Courts below, is not liable for interference in my inherent as also discretionary and equitable jurisdiction. More so, when the complaint read as a whole discloses commission of offence punishable under section 138 of N.I. Act. Petition dismissed. Ad-interim order to stand vacated forthwith.

17. Insofar as Writ Petition Nos.1732 of 2006 and 1733 of 2006 are concerned, I have perused them as well. There, the contention that the transaction being with a Private Limited Company and complaint by an individual would not be maintainable, is again something which must be decided at a subsequent stage after all materials are produced. From a reading of the complaint it does not appear to be a case where the complainant is trying to ventilate his civil disputes by taking recourse to the criminal proceedings. The trial being pending, it is not a fit case for interference with the same.

18. With regard to the third grievance namely CR No.434 of 2004 is concerned, once again the transaction being identical so also contentions, in my view, it would not be proper to interfere with the investigations. The offence alleged is serious inasmuch as the petitioner threatened the complainant with dire consequences. This is not the stage to consider whether the threats were allegedly administered or whether the conversation or exchange of words, if any, is with regard to certain civil disputes.

19. Therefore, above two writ petitions also

stand dismissed.

(S.C.DHARMADHIKARI, J.)

20. At this stage, a request is made to continue ad-interim orders. However, the hearing has been expedited and I am informed that learned Magistrate is making an endeavour to dispose off the main complaint expeditiously. In these circumstances and finding no substance in the contentions raised, I decline to continue the ad-interim order.

(S.C.DHARMADHIKARI, J.)